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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,326	02/14/2002	Raphael Louis Mangin	CM2502	8690

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

FIDEI, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Sp

<b>Office Action Summary</b>	<b>Application No.</b> 10/075,326	<b>Applicant(s)</b> MANGIN, RAPHAEL LOUIS	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites said container “optionally further comprising a wipe holder”. Dictionary.com defines “optionally” as left to choice; not compulsory or automatic. Hence it appears the language added by the “optionally” clause has no effect on the intellectual propriety rights of the claimed invention. Given the plain ordinary meaning it is then unclear why the language is added at all, otherwise something is imparted by the language. In either instance, an ambiguity is created.

The examiner’s reviewing authority has stated that the second paragraph of 35 U.S.C. 112 requires a claim to particularly point out and distinctly claim the subject matter which applicant regards as his or her invention. Under *In re Hammack*, 166 USPQ 204 (CCPA 1970) and *In re Moore*, 169 USPQ 236 (CCPA 1971), claims must be analyzed to determine their metes and bounds so that it is clear from the claim language what subject matter the claims encompass. This analysis must be performed in light of the applicable prior art and the disclosure. The definiteness of the claims is important to allow others who wish to enter the market place to ascertain the boundaries of protection that are provided by the claims. *Ex parte Kristensen*, 10 USPQ 2d 1701, 1703 (PTO Bd. Pat. App. & Intf. 1989).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer et al (Patent no. 5,971,153) in view of Muckenfuhs et al (Patent no. 5,022,216). In figure 1 of Bauer et al a container having a trapezoidal shape is disclosed with a plurality of vertically stacked wipes 5, in as much as is claimed. The difference between claim 1 and Bauer et al resides in a dispensing opening located at the intersection between the top side wall and the front side wall. Muckenfuhs et al teaches such a feature in figures 1 and 4. It would have been obvious to one skilled in the art at the time the invention was made to modify the container of Bauer et al by constructing a dispensing opening at the intersection between the top side wall and the front side wall as taught by Muckenfuhs, in order to permit dispensing of the articles within the package.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 4 and 10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'DTF', is positioned above the printed name.

David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf

February 4, 2006